



Reprinted  
February 3, 2006

---

## HOUSE BILL No. 1279

---

DIGEST OF HB 1279 (Updated February 2, 2006 4:19 pm - DI 84)

**Citations Affected:** IC 8-1; noncode.

**Synopsis:** Telecommunications. Prohibits the utility consumer counselor from engaging in another occupation that would conflict with the duties of the office. (Current law prohibits the counselor from engaging in any other occupation.) Specifies that a person that transmits communications over Internet Protocol enabled services or provides commercial mobile radio service (CMRS) is not a public utility. Prohibits the utility regulatory commission (IURC) from exercising jurisdiction over: (1) advanced and broadband services; (2) information services; and (3) CMRS. Prohibits, after June 30, 2006, the IURC from exercising jurisdiction over nonbasic telecommunications service. Requires an incumbent local exchange carrier (ILEC) to continue to offer a flat monthly rate for unlimited local calling in exchange areas in which the provider offers basic telecommunications service on June 30, 2006. Provides that an extended area of service in which a provider offers basic telecommunications service on June 30, 2006, may not be reduced in area or scope without the IURC's approval. Prohibits the IURC from exercising jurisdiction over basic telecommunications service in an exchange area if broadband services are available to at least 50% of households. Requires the IURC to biennially identify and eliminate obsolete telecommunications regulations. Requires the IURC to adopt rules requiring a  
(Continued next page)

**Effective:** Upon passage; May 1, 2006; July 1, 2006.

---

**Murphy, Koch, Mahern, Kuzman**  
(SENATE SPONSORS—HERSHMAN, WYSS, HUME)

---

January 10, 2006, read first time and referred to Committee on Technology, Research and Development.  
January 19, 2006, amended, reported — Do Pass.  
January 25, 2006, read second time, amended, ordered engrossed.  
January 26, 2006, engrossed.  
February 2, 2006, read third time, recommitted to Committee of One, amended; passed.  
Yeas 85, nays 14.

---

HB 1279—LS 6902/DI 101+



C  
o  
p  
y

telecommunications service provider, whenever the provider communicates with a residential customer about changing the customer's basic telecommunications service to non basic telecommunications service, to notify the customer of: (1) the option of basic telecommunications service; and (2) any regulatory protections the customer would forego by switching to nonbasic telecommunications service. Specifies that duties to provide dual party relay services apply to a communications service provider that is required to provide such services under federal law. Preserves the IURC's jurisdiction over: (1) dual party relay services; (2) the 211 dialing code; (3) slamming and cramming laws; (4) interconnection agreements, including interconnection not governed by federal law; and (5) rates charged by an ILEC to a pay phone service provider. Prohibits a telecommunications provider from establishing a rate, term, or condition that is unreasonably preferential, prejudicial, or discriminatory. Allows the IURC to: (1) establish service quality standards for services provided by an ILEC to another provider; and (2) require semi-annual reporting of service quality goals for other services offered by a provider. Allows the IURC to: (1) order certain equitable remedies; and (2) impose a civil penalty of not more than \$10,000; if a provider engages in a prohibited act. Provides that a civil penalty may be imposed only for a willful failure to comply with service quality standards or goals or certain billing errors. Prohibits a communications service provider from entering into an agreement after April 30, 2006, to limit or restrict another provider's access to privately or publicly owned real property. Prohibits the owner, operator, or developer of multitenant real estate used for business purposes from limiting or restricting access to privately or publicly owned real property by a communications service provider authorized to provide service. Requires a local unit to make a local franchise available to any entity, other than the unit's incumbent cable operator, that seeks to provide video programming in the unit by means of any facilities that make use of public rights-of-way, regardless of the technology used. Provides that a franchise made available to such an entity must contain identical terms and conditions as the franchise in effect for the incumbent cable operator. Prohibits an entity that does not hold a franchise from providing video programming in a unit by means of any facilities that make use of public rights-of-way, regardless of the technology used. Prohibits the IURC from requiring a multichannel video programming distributor to pay any fee or charge, other than a franchise fee paid to a local unit, as a condition of receiving or holding a state certificate of franchise authority. (Previous amendment removed provisions providing that after June 30, 2006, the IURC is the sole franchising authority for the provision of video service in Indiana.) Requires the IURC to adopt rules to establish the Indiana Lifeline assistance program to provide reduced charges for basic telecommunications service for eligible customers. Requires the IURC to submit to the regulatory flexibility committee an analysis of various telecommunications issues.

**C  
o  
p  
y**



Reprinted  
February 3, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

## HOUSE BILL No. 1279

A BILL FOR AN ACT to amend the Indiana Code concerning  
utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 8-1-1.1-3 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. The governor  
3       shall appoint a consumer counselor, for a term of four (4) years at a  
4       salary to be fixed by the governor. The counselor shall serve at the will  
5       and pleasure of the governor. The counselor shall be a practicing  
6       attorney, and qualified by knowledge and experience to practice in  
7       utility regulatory agency proceedings. The counselor shall apply ~~his~~ **the**  
8       **counselor's** full efforts to the duties of the office and may not ~~be~~  
9       ~~actively engaged~~ **engage** in any ~~other~~ occupation, practice, profession  
10      or business **that would conflict with the duties of the office.**

11      SECTION 2. IC 8-1-2-1 IS AMENDED TO READ AS FOLLOWS  
12      [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) **Except as provided in**  
13      **section 1.1 of this chapter**, "public utility", as used in this chapter,  
14      means every corporation, company, partnership, limited liability  
15      company, individual, association of individuals, their lessees, trustees,

HB 1279—LS 6902/DI 101+



C  
O  
P  
Y

or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment within the state for the:

- (1) conveyance of telegraph or telephone messages;
- (2) production, transmission, delivery, or furnishing of heat, light, water, or power; or
- (3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that may acquire, own, or operate any of the foregoing facilities.

(b) "Municipal council", as used in this chapter, means the legislative body of any town or city in Indiana wherein the property of the public utility or any part thereof is located.

(c) "Municipality", as used in this chapter, means any city or town of Indiana.

(d) "Rate", as used in this chapter, means every individual or joint rate, fare, toll, charge, rental, or other compensation of any utility or any two (2) or more such individual or joint rates, fares, tolls, charges, rentals, or other compensation of any utility or any schedule or tariff thereof, but nothing in this subsection shall give the commission any control, jurisdiction, or authority over the rate charged by a municipally owned utility except as in this chapter expressly provided.

(e) "Service" is used in this chapter in its broadest and most inclusive sense and includes not only the use or accommodation afforded consumers or patrons but also any product or commodity furnished by any public or other utility and the plant, equipment, apparatus, appliances, property, and facility employed by any public or other utility in performing any service or in furnishing any product or commodity and devoted to the purposes in which such public or other utility is engaged and to the use and accommodation of the public.

(f) "Commission", as used in this chapter, means the commission created by IC 8-1-1-2.

(g) "Utility", as used in this chapter, means every plant or equipment within the state used for:

- (1) the conveyance of telegraph and telephone messages;
- (2) the production, transmission, delivery, or furnishing of heat, light, water, or power, either directly or indirectly to the public; or
- (3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that may acquire, own, or

**C**  
**O**  
**P**  
**Y**



operate facilities for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste. A warehouse owned or operated by any person, firm, limited liability company, or corporation engaged in the business of operating a warehouse business for the storage of used household goods is not a public utility within the meaning of this chapter.

(h) "Municipally owned utility", as used in this chapter, includes every utility owned or operated by a municipality.

(i) "Indeterminate permit", as used in this chapter, means every grant, directly or indirectly from the state, to any corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court, of power, right, or privilege to own, operate, manage, or control any plant or equipment, or any part of a plant or equipment, within this state, for the:

(1) production, transmission, delivery, or furnishing of heat, light, water, or power, either directly or indirectly to or for the public;

(2) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste; or

(3) furnishing of facilities for the transmission of intelligence by electricity between points within this state;

which shall continue in force until such time as the municipality shall exercise its right to purchase, condemn, or otherwise acquire the property of such public utility, as provided in this chapter, or until it shall be otherwise terminated according to law.

SECTION 3. IC 8-1-2-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 1.1. A person or an entity that:**

**(1) transmits communications over Internet Protocol enabled services, including:**

**(A) voice;**

**(B) data;**

**(C) video;**

**(D) any combination of voice, data, and video communications;**

**(2) provides the necessary software, hardware, transmission service, or transmission path for communications described in subdivision (1); or**

**(3) provides commercial mobile radio service (as defined in 47 CFR 51.5);**

**is not a public utility (as defined in section 1 of this chapter) solely**

C  
O  
P  
Y



by reason of engaging in any activity described in this section.

SECTION 4. IC 8-1-2.6-0.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 0.1. (a) As used in this chapter, "basic telecommunications service" means stand alone telephone exchange service (as defined in 47 U.S.C. 153(47)) that:**

(1) is provided to a residential customer through the customer's primary line; and

(2) is:

(A) the sole service purchased by the customer;

(B) not part of a package of services, a promotion, or a contract; or

(C) not otherwise offered at a discounted price.

(b) The term includes, at a minimum, the following:

(1) Voice grade access to the public switched telephone network with minimum bandwidth of three hundred (300) to three thousand (3,000) Hertz.

(2) Dual tone multifrequency signaling and single party service.

(3) Access to:

(A) emergency services, including access to 911 and enhanced 911 if provided by the local government having jurisdiction in the service area;

(B) operator services;

(C) local directory assistance;

(D) telephone relay services; and

(E) interexchange service.

(4) Toll limitation services for qualifying low income customers.

SECTION 5. IC 8-1-2.6-0.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 0.2. As used in this chapter, "incumbent local exchange carrier" has the meaning set forth in 47 U.S.C. 251(h).**

SECTION 6. IC 8-1-2.6-0.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 0.3. (a) As used in this chapter, "nonbasic telecommunications service" means retail telecommunications service other than:**

(1) basic telecommunications service, except when the service is purchased by the customer:

(A) in conjunction with another service;

(B) as part of a package of services, a promotion, or a

C  
o  
p  
y



- contract; or
- (C) at an otherwise discounted price;
- (2) commercial mobile radio service (as defined in 47 CFR 51.5);
- (3) services outside the jurisdiction of the commission under section 1.1 of this chapter; and
- (4) switched and special access services.

(b) The term includes services included in:

- (1) customer specific contracts;
- (2) volume, term, and discount pricing options; and
- (3) packages, bundles, and promotions, including offers designed to win new customers, retain existing customers, or win back former customers.

SECTION 7. IC 8-1-2.6-0.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 0.4. As used in this chapter, "payphone service provider" means an entity, other than an incumbent local exchange carrier, that owns and operates:**

- (1) public or semipublic pay telephones; or
- (2) pay telephones used to provide telephone service in correctional institutions.

SECTION 8. IC 8-1-2.6-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 0.5. As used in this chapter, "provider" means a person or an entity that offers basic or nonbasic telecommunications service.**

SECTION 9. IC 8-1-2.6-0.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 0.6. As used in this chapter, "telecommunications" has the meaning set forth in 47 U.S.C. 153(43).**

SECTION 10. IC 8-1-2.6-0.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 0.7. As used in this chapter, "telecommunications service" has the meaning set forth in 47 U.S.C. 153(46).**

SECTION 11. IC 8-1-2.6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 1. The Indiana general assembly hereby declares that:**

- (1) the maintenance of universal telephone service is a continuing goal of the commission in the exercise of its jurisdiction;
- (2) competition has become commonplace in the provision of certain telephone telecommunications services in Indiana and the

C  
o  
p  
y



United States;

**(3) advancements in and the convergence of technologies that provide voice, video, and data transmission, including:**

**(A) landline, wireless, cable, satellite, and Internet transmissions; and**

**(B) transmissions involving voice over Internet Protocol (VOIP), Internet Protocol enabled services, and voice over power lines;**

**are substantially increasing consumer choice, reinventing the marketplace with unprecedented speed, and making available highly competitive products and services and new methods of delivering local exchange service;**

**(3) (4) traditional commission regulatory policies, and practices, and existing statutes are not designed to deal with a competitive environment and technological advancements;**

**(4) (5) an environment in which Indiana consumers will have available the widest array of state-of-the-art telephone communications services at the most economic and reasonable cost possible will necessitate full and fair facilities based competition in the delivery of certain telephone telecommunications services throughout the state; Indiana; and (5) (6) streamlining of, and flexibility in, the regulation of providers of telephone telecommunications services, regardless of the technology used, is essential to the well-being of the state; Indiana, its economy, and its citizens and that the public interest requires that the commission be authorized to formulate and adopt rules and policies as will permit the commission, in the exercise of its expertise, to regulate and control the provision of telephone telecommunications services to the public in an increasingly competitive and technologically changing environment, giving due regard to the interests of consumers and the public, the ability of market forces to encourage innovation and investment, and to the continued universal availability of universal telephone basic telecommunications service.**

SECTION 12. IC 8-1-2.6-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 1.1. The commission may not exercise jurisdiction over:**

**(1) advanced services (as defined in 47 CFR 51.5);**

**(2) broadband service, however defined or classified by the Federal Communications Commission;**

**(3) information services (as defined in 47 U.S.C. 153(20));**

C  
o  
p  
y





**(4) Internet Protocol enabled services:**

**(A) regardless of how the service is classified by the Federal Communications Commission; and**

**(B) except as expressly permitted under IC 8-1-2.8;**

**(5) a CMRS provider (as defined in IC 36-8-16.5-6); or**

**(6) any service not commercially available on July 1, 2006.**

SECTION 13. IC 8-1-2.6-1.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1.2. (a) Except as provided in section 16 of this chapter, the commission shall not, by entering an order, adopting a rule, or taking any other action, do any of the following:

**(1) Impose a regulation concerning any nonbasic telecommunications service unless the regulation is imposed equally and uniformly on all providers.**

**(2) Impose a service quality regulation or performance standard concerning any nonbasic telecommunications service.**

**(3) Exercise jurisdiction over:**

**(A) any nonbasic telecommunications service; or**

**(B) the provider of any nonbasic telecommunications service;**

**if the commission has declined to exercise jurisdiction over the service or provider before July 1, 2006.**

**(b) Subject to sections 12 and 16 of this chapter, and except as provided in IC 8-1-29.5, after June 30, 2006, the commission shall not exercise jurisdiction over any nonbasic telecommunications service.**

SECTION 14. IC 8-1-2.6-1.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1.3. (a) The commission shall not, by entering an order, adopting a rule, or taking any other action, do any of the following with respect to basic telecommunications services and providers of basic telecommunications services:

**(1) Impose a regulation concerning any basic telecommunications service unless the regulation is imposed equally and uniformly on all providers.**

**(2) Impose a service quality regulation unless the regulation is imposed equally and uniformly on all providers.**

**(3) Impose a regulation or performance standard concerning service quality that:**

**(A) is more stringent than any service quality regulation or**

**C  
o  
p  
y**



1 performance standard in effect on June 30, 2006; or  
 2 (B) measures performance more often than quarterly.  
 3 (4) Impose a reporting requirement concerning service  
 4 quality that requires reporting to the commission more  
 5 frequently than quarterly.  
 6 (5) Impose a regulation concerning universal availability of  
 7 basic telecommunications service unless the regulation is  
 8 imposed on a nondiscriminatory and competitively and  
 9 technologically neutral basis.  
 10 (6) Exercise jurisdiction over:  
 11 (A) any basic telecommunications service; or  
 12 (B) the provider of any basic telecommunications service;  
 13 if the commission has declined to exercise jurisdiction over the  
 14 service or provider before July 1, 2006.  
 15 (7) Impose a regulation on, or exercise jurisdiction over:  
 16 (A) any basic telecommunications service; or  
 17 (B) the provider of any basic telecommunications service;  
 18 if the service or provider is exempt from commission  
 19 jurisdiction under IC 8-1-2-88.5 or IC 8-1-17-22.5, except as  
 20 allowed under IC 8-1-2-88.5, IC 8-1-17-22.5, or IC 8-1-29.5.  
 21 (b) Except as provided in IC 8-1-29.5, the commission may not  
 22 exercise jurisdiction over:  
 23 (1) the price, terms, and conditions of basic  
 24 telecommunications service; or  
 25 (2) any provider of basic telecommunications service;  
 26 in an exchange area in which the commission finds, after notice and  
 27 hearing, that broadband services are available to at least fifty  
 28 percent (50%) of the households located in the exchange area. The  
 29 commission may make a finding under this subsection at the  
 30 request of a provider or on the commission's own motion. In  
 31 making a finding under this subsection, the commission shall not  
 32 consider broadband services provided through radio frequencies  
 33 allocated by the Federal Communications Commission to Direct  
 34 Broadcast Satellite Service (as defined in 47 CFR 25.201).  
 35 (c) The commission shall make a finding under subsection (b)  
 36 not later than six (6) months after a provider's request to make a  
 37 finding as to whether broadband services are available to at least  
 38 fifty percent (50%) of the households located in an exchange area.  
 39 (d) Notwithstanding subsections (b) through (c), a provider may  
 40 continue to elect to file and maintain with the commission tariffs  
 41 for basic telecommunications services offered by the provider in  
 42 Indiana. The commission shall permit a provider to implement a

C  
 o  
 p  
 y



1 tariff or a modification to a tariff on the first day immediately  
 2 following the date of filing with the commission. A provider may  
 3 withdraw without the approval of the commission any tariff filed  
 4 under this subsection.

5 (e) The commission may investigate, on a formal or an informal  
 6 basis, a complaint concerning a provider's compliance with a tariff  
 7 filed with the commission under subsection (d). The commission's  
 8 investigation shall be limited to the sole issue of the provider's  
 9 compliance with the filed tariff. The commission shall conduct a  
 10 formal investigation only upon the request of any class satisfying  
 11 the standing requirements of IC 8-1-2-54.

12 (f) An incumbent local exchange carrier shall continue to make  
 13 available a flat monthly rate with unlimited local calling for basic  
 14 telecommunications services in the exchange areas in which the  
 15 provider offers basic telecommunications services on June 30,  
 16 2006. An extended area of service in which a provider offers basic  
 17 telecommunications services on June 30, 2006, may not be reduced  
 18 in area or scope without the approval of the commission after  
 19 notice and hearing.

20 (g) This section may not be construed to permit a provider to  
 21 impose local measured service on the provider's basic  
 22 telecommunications customers.

23 SECTION 15. IC 8-1-2.6-2 IS AMENDED TO READ AS  
 24 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) Notwithstanding  
 25 any other statute, the commission may:

- 26 (1) on its own motion;
- 27 (2) at the request of the utility consumer counselor;
- 28 (3) at the request of one (1) or more telephone companies; or
- 29 (4) at the request of any class satisfying the standing requirements  
 30 of IC 8-1-2-54;

31 enter an order, after notice and hearing, that the public interest requires  
 32 the commission to commence an orderly process to decline to exercise,  
 33 in whole or in part, its jurisdiction over telephone companies or certain  
 34 telephone services. (a) This section applies to commission rules and  
 35 orders concerning telecommunications service or providers of  
 36 telecommunications service.

37 (b) Rules and orders described in this section:

- 38 (1) may be adopted or issued only after notice and hearing;
- 39 and
- 40 (2) must be:
  - 41 (A) consistent with this chapter; and
  - 42 (B) in the public interest, as determined by the commission

C  
o  
p  
y



under subsection (d).

(c) Rules and orders described in this section must promote one (1) or more of the following:

(1) Cost minimization for providers to the extent that a provider's quality of service and facilities are not diminished.

(2) A more accurate evaluation by the commission of a provider's physical or financial conditions or needs, as well as a less costly regulatory procedure for the provider, the provider's customers, or the commission.

(3) Ensure consumer access to affordable basic telecommunications service.

(4) Development of depreciation guidelines and procedures that recognize technological obsolescence.

(5) Increased provider management efficiency beneficial to customers.

(6) Regulation consistent with a competitive environment.

~~(b)~~ (d) In determining whether the public interest will be served, as required under subsection (b), the commission shall consider:

(1) whether technological change, competitive forces, or regulation by other state and federal regulatory bodies render the exercise of jurisdiction by the commission unnecessary or wasteful;

(2) whether the exercise of commission jurisdiction produces tangible benefits to ~~telephone company~~ the customers of providers; and

(3) whether the exercise of commission jurisdiction inhibits a regulated entity from competing with unregulated providers of functionally similar ~~telephone~~ telecommunications services or equipment.

~~(c)~~ The commission may:

(1) on its own motion;

(2) at the request of the utility consumer counselor;

(3) at the request of one (1) or more telephone companies; or

(4) at the request of any class satisfying the standing requirements of IC 8-1-2-54;

enter an order notifying any telephone company or class of telephone companies jurisdiction over which was either limited or not exercised according to this section that the commission will proceed to exercise jurisdiction over the telephone company; class of telephone companies; or class of telephone services provided by telephone companies to the extent the commission considers appropriate unless one (1) or more of those telephone companies formally request a hearing within fifteen

C  
O  
P  
Y



(15) days following the date of such order.

SECTION 16. IC 8-1-2.6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) A regulatory flexibility committee is established to monitor competition in the ~~telephone~~ **telecommunications** industry.

(b) The committee is composed of the members of a house standing committee selected by the speaker of the house of representatives and a senate standing committee selected by the president pro tempore of the senate. In selecting standing committees under this subsection, the speaker and president pro tempore shall determine which standing committee of the house of representatives and the senate, respectively, has subject matter jurisdiction that most closely relates to the electricity, gas, energy policy, and telecommunications jurisdiction of the regulatory flexibility committee. The chairpersons of the standing committees selected under this subsection shall cochair the regulatory flexibility committee.

(c) The commission shall, by July 1 of each year, prepare for presentation to the regulatory flexibility committee ~~an analysis of a report that includes~~ the following:

(1) **An analysis of the effects of competition and technological change on universal service and on pricing of all ~~telephone~~ telecommunications services under the jurisdiction of the commission offered in Indiana.**

(2) **An analysis of the status of competition and technological change in the provision of video service to Indiana customers. The commission's analysis under this subdivision must include a description of:**

(A) the number of multichannel video programming distributors offering video service to Indiana customers, other than video provided under federally licensed bandwidth;

(B) the technologies used to provide video service to Indiana customers; and

(C) the effects of competition on the pricing and availability of video service in Indiana.

(3) **Beginning with the report due July 1, 2008, and in each report due in an even-numbered year after July 1, 2008:**

(A) an identification of all telecommunications rules and policies that are eliminated; and

(B) a justification for all telecommunications rules and policies that are retained;

by the commission under section 4.1 of this chapter during the

C  
o  
p  
y



**two (2) most recent state fiscal years.**

(d) In addition to reviewing the commission report prepared under subsection (c), the regulatory flexibility committee shall also issue a report and recommendations to the legislative council by November 1 of each year that is based on a review of the following issues:

(1) The effects of competition **and technological change** in the ~~telephone~~ **telecommunications** industry and impact of competition on available subsidies used to maintain universal service.

(2) The status of modernization of the ~~public telephone network~~ **publicly available telecommunications infrastructure** in Indiana and the incentives required to further enhance this infrastructure.

(3) The effects on economic development and educational opportunities of ~~this the~~ modernization **described in subdivision (2).**

(4) The current ~~method~~ **methods** of regulating ~~telephone companies providers, at both the federal and state levels, and the method's effectiveness of the methods.~~

(5) The economic and social effectiveness of current ~~telephone telecommunications~~ service pricing.

(6) All other telecommunications issues the committee deems appropriate.

The report and recommendations issued under this subsection to the legislative council must be in an electronic format under IC 5-14-6.

(e) The regulatory flexibility committee shall meet on the call of the cochairpersons to study telecommunications issues described in subsection (d). The committee shall, with the approval of the commission, retain the independent consultants the committee considers appropriate to assist the committee in the review and study. The expenses for the consultants shall be paid by the commission.

SECTION 17. IC 8-1-2.6-4.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 4.1. (a) Not later than:**

**(1) July 1, 2008; and**

**(2) July 1 of each even-numbered year after July 1, 2008;**

**the commission shall, through rulemaking under IC 4-22-2 or another commission proceeding, identify and eliminate regulations and policies concerning telecommunications services and providers that are no longer necessary or appropriate as a result of technological advancement and competition in the telecommunications industry.**

**C  
o  
p  
y**



(b) Not later than July 1, 2007, the commission shall adopt rules under IC 4-22-2 to require a telecommunications service provider, at any time the provider communicates with a residential customer about changing the customer's basic telecommunications service to nonbasic telecommunications service, to notify the residential customer of:

- (1) the option of basic telecommunications service; and
- (2) any regulatory protections, including pricing or quality of service, that the residential customer would forego by switching to nonbasic telecommunications service.

(c) In carrying out this section, the commission shall promote the policies and purposes set forth in this chapter. Beginning in 2008, and in each even-numbered year after 2008, the commission's annual report to the regulatory flexibility committee under section 4 of this chapter must:

- (1) identify any regulation or policy eliminated; and
- (2) justify any regulation or policy that is retained;

by the commission under this section during the two (2) most recent state fiscal years.

SECTION 18. IC 8-1-2.6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. (a) As used in this section, "rate reduction" means a decrease in either recurring or nonrecurring rates or charges.

(b) Notwithstanding any other provision of this chapter or any other statute, a ~~telephone company~~ provider may ~~subject to the prior approval of the commission;~~ participate in any rate reduction program for residential customers funded from revenues provided by any governmental entity or other revenues administered by an agency of that entity.

SECTION 19. IC 8-1-2.6-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 10. (a) In acting to impose any requirements or set any prices concerning:

- (1) unbundled network elements;
- (2) the resale of telecommunications services; or
- (3) interconnection with the facilities and equipment of providers;

the commission shall not exceed the authority delegated to the commission under federal laws and regulations with respect to those actions.

(b) The commission shall establish reasonable pricing for:

- (1) unbundled network elements, to the extent the commission

C  
o  
p  
y



is authorized to establish pricing for unbundled network elements under any authority lawfully delegated to the commission by the Federal Communications Commission;  
 (2) the resale of telecommunications service; and  
 (3) interconnection with the facilities and equipment of providers;

in accordance with the federal Telecommunications Act of 1996, 47 U.S.C. 251 et seq., and all other federal laws and regulations.

(c) This chapter does not affect:

(1) the commission's continuing authority to:

(A) act under 47 U.S.C. 252(a) to mediate a dispute between providers concerning interconnection, the resale of services, or access to network elements;

(B) act under 47 U.S.C. 252(b) to arbitrate a dispute between providers concerning interconnection, the resale of services, or access to network elements;

(C) act under 47 U.S.C. 252(e) to approve an interconnection agreement between providers; or

(D) review and approve a provider's statement of terms and conditions under 47 U.S.C. 252(f);

(2) a provider's ability to file a complaint with the commission to have a dispute, after notice and hearing, decided by the commission consistent with this article;

(3) the commission's duties under IC 8-1-2.8 concerning the provision of dual party relay services to hearing impaired and speech impaired persons in Indiana;

(4) the commission's duties under IC 8-1-19.5 concerning the administration of the 211 dialing code for communications service used to provide access to human services information and referrals;

(5) the commission's responsibilities under IC 8-1-29 to adopt and enforce rules to ensure that a customer of a telecommunications provider is not:

(A) switched to another telecommunications provider unless the customer authorizes the switch; or

(B) billed for services by a telecommunications provider that without the customer's authorization added the services to the customer's service order;

(6) the commission's authority to:

(A) investigate whether a provider has engaged in prohibited actions; and

(B) provide equitable relief or impose civil penalties for

**C  
O  
P  
Y**





- violations;  
 under IC 8-1-29.5;  
 (7) the commission's authority to investigate and resolve pursuant to IC 8-1-2-5 an interconnection not governed by federal law; or  
 (8) the commission's duty to establish and administer the Indiana lifeline assistance program under IC 8-1-36.

SECTION 20. IC 8-1-2.6-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 11. (a) Notwithstanding any other law, the commission shall not, by entering an order, adopting a rule, or taking any other action, impose a regulation or performance standard concerning the transfer of customers between providers unless the regulation or performance standard is imposed equally and uniformly on all providers.**

**(b) After a customer's telecommunications services have been transferred, the initial provider may, to the extent permitted by federal law and by IC 24-4.7-4, contact the customer to confirm that the customer has made the decision to change to the other provider.**

**(c) A provider may not refuse to transfer or facilitate the transfer of a local exchange service customer of the provider to another provider on the same terms and conditions that the provider receives from any other provider unless the terms and conditions violate federal law.**

SECTION 21. IC 8-1-2.6-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 12. This chapter does not terminate or otherwise change the terms and conditions of a settlement agreement approved by the commission under this chapter before July 29, 2004.**

SECTION 22. IC 8-1-2.6-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 13. This chapter does not modify, affect, or nullify the responsibilities lawfully delegated to the commission under:**

- (1) 47 U.S.C. 251; and**  
**(2) 47 U.S.C. 252.**

SECTION 23. IC 8-1-2.6-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 14. This chapter does not affect the rights and obligations of any person or entity concerning the payment of switched network access rates or other carrier compensation**

**C**  
**O**  
**P**  
**Y**



concerning:

- (1) Internet Protocol enabled service;
- (2) advanced services (as defined in 47 CFR 51.5);
- (3) broadband service; or
- (4) other Internet access services.

SECTION 24. IC 8-1-2.6-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 15. (a) Except as provided in subsection (b), if there is a conflict between this chapter and another provision of this article, this chapter controls.

(b) This chapter does not affect the rights of a telecommunications provider under IC 8-1-2-88.5 or IC 8-1-17-22.5.

SECTION 25. IC 8-1-2.6-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 16. Notwithstanding any other statute, the commission shall retain jurisdiction to establish just and reasonable rates that may be charged by an incumbent local exchange carrier to a payphone service provider. Rates established under this section must be:

- (1) based on the costs incurred by the incumbent local exchange carrier to provide the service;
- (2) consistent with the requirements of 47 U.S.C. 276;
- (3) nondiscriminatory; and
- (4) consistent with the pricing guidelines for payphone service providers established by the Federal Communications Commission.

SECTION 26. IC 8-1-2.8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) As used in this chapter, "dual party relay services" means ~~telephone~~ **telecommunications** transmission services that provide the ability for a person who has a hearing impairment or speech impairment to engage in communication ~~by wire or radio~~ with a hearing person in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services. ~~by wire or radio.~~

(b) The term includes services that enable two-way communication between a person who uses a telecommunications device for the deaf or other nonvoice terminal and a person who does not use such a device.

SECTION 27. IC 8-1-2.8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. As used in this

C  
o  
p  
y



chapter, "local exchange ~~telephone~~ company" or "LEC" means a company authorized by the commission to provide, among other services, local exchange access service. refers to any communications service provider (as defined in IC 8-1-32.6-6) that:

(1) offers communications service to customers in Indiana; and

(2) is required to provide dual party relay services to hearing impaired and speech impaired persons under federal law.

SECTION 28. IC 8-1-2.8-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8.5. As used in this chapter, "provider" has the meaning set forth in IC 8-1-2.6-0.5.

SECTION 29. IC 8-1-2.8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 10. The general assembly finds and declares the following:

(1) That it is in the public interest of the state to promptly provide hearing impaired or speech impaired persons with access to ~~telephone~~ telecommunications services that are functionally equivalent to those provided to hearing persons.

(2) That Title IV of the ADA mandates that each telephone company providing telephone service within the state must provide dual party relay services on or before July 26, 1993, to hearing impaired and speech impaired persons within the territorial area or areas it serves in a manner that meets or exceeds the requirements of regulations prescribed by the FCC.

(3) That the most efficient, cost effective, and fair method for LECs to provide dual party relay services to hearing impaired and speech impaired persons and to comply with the federal mandate without the use of tax revenues is the establishment of the Indiana Telephone Relay Access Corporation for the Hearing and Speech Impaired under this chapter.

(4) That the provision of dual party relay services to hearing impaired and speech impaired persons can be enhanced by providing in appropriate circumstances in the sole discretion of the InTRAC telecommunications devices that facilitate access to the dual party relay services.

SECTION 30. IC 8-1-2.8-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 18. The articles of incorporation of the InTRAC must provide the following:

(1) The name of the corporation shall be "Indiana Telephone Relay Access Corporation for the Hearing and Speech Impaired".

(2) The sole purpose for which the InTRAC shall be organized

C  
o  
p  
y



and operated is to provide at the lowest cost reasonably possible:

(A) on behalf of ~~telephone companies~~ **providers** and the citizens of Indiana; and

(B) in conjunction with ~~telephone companies;~~ **providers;** adequate and dependable dual party relay services that may include in appropriate circumstances in the sole discretion of the InTRAC telecommunications devices to hearing impaired and speech impaired persons within the territorial area that ~~telephone companies~~ **providers** serve in a manner that meets or exceeds the requirements of regulations prescribed by the FCC.

(3) The InTRAC must have authority to perform any lawful act that is necessary, convenient, or expedient to accomplish the purpose for which the InTRAC is formed.

(4) No part of the net earnings of the InTRAC may inure to the benefit of any member, director, or officer of the InTRAC, nor shall any member of the InTRAC receive any earnings from the corporation except as follows:

(A) A member may be an independent contractor, a supplier, a vendor, or an authorized agent of the InTRAC and may receive fair and reasonable compensation for the member's provision of goods or services.

(B) An officer may receive reasonable compensation for services that the officer performs in the officer's capacity as an officer of the InTRAC.

(C) A director may be reimbursed for expenses incurred by the director in the performance of the director's duties.

(5) The InTRAC may not:

(A) make an advancement for services to be performed in the future; or

(B) make a loan of money or property to any director or officer of the corporation.

(6) No member, director, or officer of the InTRAC or any private individual may share in the distribution of any of the assets of the InTRAC upon its dissolution.

(7) If there is a dissolution of the InTRAC, any of the assets of the InTRAC available for distribution shall be distributed to a charity:

(A) selected by the board of directors of the InTRAC; and

(B) having a purpose that includes providing services to hearing impaired and speech impaired persons.

(8) The InTRAC shall have one (1) class of members consisting of those ~~telephone companies~~ **providers** that are designated as authorized LECs by the commission.

C  
o  
p  
y



(9) Each member of the InTRAC shall serve as a member for as long as the commission finds that the member is a LEC. A member's:

(A) right to vote at meetings of the members of the InTRAC; and

(B) right, title, and interest in or to the corporation; cease on the termination of a member's membership.

(10) Each member present in person or by proxy at a meeting of the members of the InTRAC may cast one (1) vote upon each question voted upon at:

(A) all meetings of the members; and

(B) in any election of a director of the InTRAC.

(11) The board of directors of the InTRAC consists of seven (7) directors selected as follows:

(A) Six (6) directors elected by the members of the InTRAC.

(B) The director of the state office of deaf and hearing impaired services.

(12) The business, property, and affairs of the InTRAC are managed and controlled by the board of directors of the InTRAC.

SECTION 31. IC 8-1-2.8-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 20. (a) In pursuit of its purpose, the InTRAC may do the following:

(1) Perform audits and tests of the accounts of a LEC to verify the amounts described in section 12 of this chapter.

(2) Provide by contract dual party relay services to ~~telephone companies~~ **providers** operating outside of the state if the effect of the contract:

(A) is to decrease the amount of surcharges imposed on the customers of members of the InTRAC; and

(B) does not sacrifice the quality of service that InTRAC provides for those customers in the absence of a contract.

(b) The actions described in subsection (a) are examples and are not intended to limit in any way the scope or types of actions that the InTRAC may take in pursuit of its purposes.

SECTION 32. IC 8-1-2.8-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 21. The InTRAC shall do the following:

(1) Establish, implement, and administer, in whole or in part, a statewide dual party relay service system. Any contract for the supply or operation of a dual party relay service system or for the supply of telecommunications devices shall be provided through a competitively selected vendor.

C  
o  
p  
y



(2) Determine the terms and manner in which each LEC shall pay to the InTRAC the surcharge required under this chapter.

(3) Annually review the costs it incurred during prior periods, make reasonable projections of anticipated funding requirements for future periods, and file a report of the results of the review and projections with the commission by May 1 of each year.

(4) Annually employ an independent accounting firm to prepare audited financial statements for the end of each fiscal year of the InTRAC to consist of:

(A) a balance sheet;

(B) a statement of income; and

(C) a statement of cash flow;

and file a copy of these financial statements with the commission before May 2 of each year.

(5) Enter into contracts with any ~~telephone company authorized by the commission to provide services within Indiana~~ **provider** to provide dual party relay services for the ~~telephone company~~ **provider**, upon request by the ~~telephone company~~ **provider**. However, the InTRAC:

(A) shall require reasonable compensation from the ~~telephone company~~ **provider** for the provision of these services;

(B) is not required to contract with its members; and

(C) shall provide dual party relay services to InTRAC members for no consideration other than the payment to the InTRAC of the surcharges collected by the member under this chapter.

(6) Send to each of its members and file with the governor and the general assembly before May 2 of each year an annual report that contains the following:

(A) A description of the InTRAC's activities for the previous fiscal year.

(B) A description and evaluation of the dual party relay services that the InTRAC provides.

(C) A report of the volume of services the InTRAC provided during the previous fiscal year.

(D) A copy of the financial statements that subdivision (4) requires.

A report filed under this subdivision with the general assembly must be in an electronic format under IC 5-14-6.

SECTION 33. IC 8-1-2.8-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 22. If:

(1) a ~~telephone company~~ **provider** that is not a member of

C  
O  
P  
Y



InTRAC originates, carries, or terminates, in whole or in part, any telecommunication message that uses the InTRAC's dual party relay services; and

(2) refuses to:

(A) enter into a contract with the InTRAC as provided in section 21(5) of this chapter; or

(B) pay any sums due under such a contract;

the InTRAC may apply to the commission for an order requiring just and reasonable payments or the payments that are due under the contract. The InTRAC may enforce this order in the courts of the state.

SECTION 34. IC 8-1-2.8-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 25. The following are not liable in any civil action for any injuries or loss to persons or property incurred by any person as a result of any act or omission of any person or entity listed in subdivisions (1) through (3) in connection with the development, adoption, implementation, maintenance, or operation of any system that provides dual party relay services or telecommunications devices, except for injuries or losses incurred as a result of willful or wanton misconduct:

(1) The InTRAC.

(2) A ~~telephone company~~ **provider** providing dual party relay services.

(3) An employee, a director, an officer, or an agent of an entity listed in subdivision (1) or (2).

SECTION 35. IC 8-1-19.5-14 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 14. (a) Notwithstanding IC 8-1-2.6, the commission may retain:**

**(1) jurisdiction over the rates, charges, and service quality of 211 services provided by telecommunications service providers; and**

**(2) the authority to fulfill the commission's duties under this chapter.**

**(b) The commission may not impose a rule concerning the service quality of 211 services provided by a telecommunications service provider unless the rule is imposed equally and uniformly on all telecommunications service providers.**

**(c) Upon a petition by:**

**(1) a telecommunications service provider; or**

**(2) a recognized 211 services provider;**

**the commission may formally or informally investigate a telecommunications service provider's rates and charges to**

**C  
o  
p  
y**



determine whether the rates and charges are just and reasonable. For purposes of this section, a rate is considered reasonable if the rate covers the telecommunications service provider's costs and allows a reasonable profit.

SECTION 36. IC 8-1-29.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]:

**Chapter 29.5. Enforcement Remedies for Prohibited Actions by Telecommunications Service Providers**

**Sec. 1.** This chapter applies to a provider and a certificate holder.

**Sec. 2.** Except as otherwise provided, the definitions in IC 8-1-2.6 apply throughout this chapter.

**Sec. 3.** As used in this chapter, "account" refers to the commission public utility fund account established under IC 8-1-6.

**Sec. 3.5.** As used in this chapter, "certificate holder" refers to a person holding a certificate of franchise authority issued under IC 8-1-34-17.

**Sec. 4.** As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

**Sec. 5.** As used in this chapter, "customer", with respect to a provider, refers to any of the following:

- (1) A residential customer.
- (2) A business customer.
- (3) Another provider that obtains retail or wholesale services from the provider.

**Sec. 6. (a)** A provider may not, with respect to any service provided at the retail or wholesale level, establish a rate, term, or condition that is unreasonably preferential, prejudicial, or discriminatory. For purposes of this subsection, a rate, term, or condition for retail service is unreasonably preferential, prejudicial, or discriminatory if the rate, term, or condition:

- (1) is not offered uniformly to all comparably situated customers in an exchange area or a service area regulated under IC 8-1-34;
- (2) violates IC 8-1-2-103(a) or IC 8-1-2-105, to the extent that the provider is subject to IC 8-1-2-103(a) or IC 8-1-2-105.

**(b)** The commission may do any of the following:

- (1) Establish service quality rules or performance standards for services provided by a provider to a customer described in section 5 of this chapter.
- (2) Require a provider or a certificate holder to report to the

C  
o  
p  
y





commission, not more often than semi-annually, service quality goals and performance data for any service offered by the provider at the retail or wholesale level. The commission shall make any information or data submitted under this subsection available:

(A) for public inspection and copying at the offices of the commission under IC 5-14-3; and

(B) electronically through the computer gateway administered by the office of technology established by IC 4-13.1-2-1;

to the extent the information or data are not exempt from public disclosure under IC 5-14-3-4(a). However, this subdivision does not empower the commission to require a provider or a certificate holder to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information. The commission shall exercise all necessary caution to avoid disclosure of confidential information supplied under this subdivision.

(c) The commission may condition any of the following on a provider's or a certificate holder's compliance with this section:

(1) An exemption from the commission's jurisdiction in one (1) or more exchange areas under IC 8-1-2.6-1.3(b).

(2) An exemption from the commission's jurisdiction under IC 8-1-2-88.5 or IC 8-1-17-22.5.

(3) The continuation of any relaxed or alternative regulatory requirements available under a settlement agreement approved by the commission under IC 8-1-2.6 before July 29, 2004.

(4) A franchise authorized under IC 8-1-34.

Sec. 7. (a) Upon:

(1) a complaint filed by:

(A) one (1) or more customers of a provider or a certificate holder;

(B) another provider;

(C) the utility consumer counselor; or

(D) any class satisfying the standing requirements of IC 8-1-2-54; or

(2) the commission's own motion;

the commission may investigate whether a provider or a certificate holder has violated section 6 of this chapter. The commission shall conduct a review under this section on an expedited basis, and a

**C  
o  
p  
y**



complaint filed by another provider under this section that alleges a violation of an interconnection agreement or order is subject to the commission's expedited procedures under 170 IAC 7-7. For purposes of this section, a violation of section 6 of this chapter includes a violation of a rule or standard adopted by the commission under section 6(b)(1) of this chapter.

(b) If, after notice and an opportunity for hearing, the commission determines from an investigation conducted under subsection (a) that a provider or a certificate holder has violated section 6 of this chapter, the commission may do any of the following:

(1) Issue an order directing the provider or the certificate holder to cease and desist from violating section 6 of this chapter.

(2) Mandate corrective action to alleviate the violation.

(3) Revoke or modify the terms of:

(A) an indeterminate permit;

(B) a certificate of territorial authority;

(C) a certificate of franchise authority issued under IC 8-1-34; or

(D) another license or authorization;

issued to the provider or the certificate holder by the commission.

(4) Impose a civil penalty of not more than ten thousand dollars (\$10,000) per violation, if the violation involves any of the following:

(A) A failure to:

(i) comply with a service quality rule or performance standard adopted by the commission under section 6(b)(1) of this chapter; or

(ii) make significant progress in achieving a service quality goal reported by the provider or the certificate holder under section 6(b)(2) of this chapter;

if the failure demonstrates, by a continuing pattern of conduct, a willful disregard by the provider or the certificate holder of its obligation to remedy the failure after the provider or the certificate holder becomes aware of the failure.

(B) Repeated errors in bills issued to one (1) or more customer classes, if the errors:

(i) represent intentional misconduct or an act of fraud by the provider or the certificate holder or by any officer,

C  
o  
p  
y



1 accountant, or agent of the provider or the certificate  
2 holder; or

3 (ii) demonstrate, by a continuing pattern of conduct, a  
4 willful disregard by the provider or the certificate holder  
5 of its obligation to remedy the errors after the provider  
6 becomes aware of the errors.

7 Subject to section 8(a)(1) of this chapter, for purposes of this  
8 subdivision, a single act, omission, occurrence, or event that  
9 results in multiple complaints being filed under subsection  
10 (a)(1) constitutes a single violation and is not subject to more  
11 than one (1) civil penalty. The commission may not consider  
12 each day that a particular violation continues to be a separate  
13 violation.

14 (c) A matter resolved through voluntary mediation is not  
15 considered a violation for purposes of this section.

16 (d) A provider or a certificate holder may not be subject to  
17 both:

18 (1) a civil penalty or order of the commission under this  
19 section; and

20 (2) a penalty or remedy agreed to in a commission approved  
21 settlement agreement;

22 for the same violation. If the commission has approved a settlement  
23 agreement under IC 8-1-2.6 that includes penalties or remedies for  
24 noncompliance with specific provisions of the settlement  
25 agreement, the penalties or remedies provided in this section do not  
26 apply to those instances of noncompliance during the life of the  
27 settlement agreement.

28 (e) The attorney general may bring an action in the name of the  
29 state to enforce any action taken by the commission under  
30 subsection (b), including the collection of an unpaid civil penalty  
31 imposed by the commission.

32 (f) The following are subject to appeal by a provider under  
33 IC 8-1-3:

34 (1) A determination by the commission under this section that  
35 a provider or a certificate holder has violated section 6 of this  
36 chapter.

37 (2) The appropriateness of any action taken by the  
38 commission under subsection (b)(1) through (b)(3).

39 (3) The appropriateness of:

40 (A) the imposition of a civil penalty by the commission  
41 under subsection (b)(4); or

42 (B) the amount of the penalty imposed.

C  
O  
P  
Y



1 Upon the motion of a provider or a certificate holder, the  
 2 commission shall stay the effect or enforceability of an order or  
 3 penalty under this section pending an appeal, subject to the  
 4 provider or the certificate holder posting a bond that complies with  
 5 Rule 18 of the Indiana Rules of Appellate Procedure.

6 Sec. 8. (a) In imposing a civil penalty under section 7(b)(4) of  
 7 this chapter, the commission may consider the following factors:

8 (1) The duration and gravity of the violation, including the  
 9 number of customers affected.

10 (2) The presence or absence of due diligence on the part of the  
 11 violating provider or certificate holder to comply with or  
 12 secure relief from section 6 of this chapter.

13 (3) Economic benefits accrued by the violating provider or  
 14 certificate holder because of the delay in complying with  
 15 section 6 of this chapter.

16 (4) The amount of a civil penalty that will:

17 (A) deter future violations by the violating provider or  
 18 certificate holder; and

19 (B) enhance voluntary compliance with section 6 of this  
 20 chapter.

21 (5) The market share of the violating provider or certificate  
 22 holder in the affected service areas.

23 (6) Good faith of the violating provider or certificate holder  
 24 in attempting to remedy the violation or to achieve  
 25 compliance after receiving notification of the violation.

26 (b) If the commission waives a civil penalty for a violation  
 27 involving any act or omission described in section 7(b)(4) of this  
 28 chapter, the commission must make a written finding as to why it  
 29 is waiving the civil penalty. The commission may waive a civil  
 30 penalty under section 7(b)(4) of this chapter if the commission  
 31 finds that the violation is the result of any of the following:

32 (1) The technological infeasibility of:

33 (A) complying with the requirements of section 6 of this  
 34 chapter; or

35 (B) remedying a violation of section 6 of this chapter.

36 (2) An act of God.

37 (3) A defect in, or prohibited use of, customer provided  
 38 equipment.

39 (4) A negligent act of a customer.

40 (5) An emergency situation.

41 (6) Unavoidable casualty.

42 (c) The secretary of the commission shall direct a civil penalty

C  
O  
P  
Y



imposed and collected under section 7(b)(4) of this chapter as follows:

(1) A civil penalty imposed for a violation that directly affects retail customers must be refunded directly to the customers of the violating provider or certificate holder in the form of credits on customer bills.

(2) A civil penalty imposed for a violation that directly harms another provider or another certificate holder must be awarded directly to the provider or certificate holder.

(3) A civil penalty imposed for a violation not described in subdivision (1) or (2) must be deposited into an account designated by the Indiana finance authority for use by the authority in making loans or grants to broadband developers and operators under the Indiana broadband development program established by IC 8-1-33-15.

SECTION 37. IC 8-1-32.6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE MAY 1, 2006]:

**Chapter 32.6. Access to Real Property by Communications Service Providers**

**Sec. 1.** This chapter applies to a communications service provider that holds:

- (1) a municipal franchise;
- (2) an indeterminate permit;
- (3) a certificate of territorial authority; or
- (4) another lawfully issued license or authorization;

to provide communications service in one (1) or more service areas in Indiana.

**Sec. 2.** As used in this chapter, "affiliate" has the meaning set forth in IC 23-1-43-1. The term includes a parent company or a subsidiary.

**Sec. 3.** As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

**Sec. 4. (a)** As used in this chapter, "communications service" refers to any of the following:

- (1) A telecommunications service (as defined in 47 U.S.C. 153(46)) other than commercial mobile radio service (as defined in 47 CFR 51.5).
- (2) An information service (as defined in 47 U.S.C. 153(20)).

**(b)** The term includes:

- (1) video service;
- (2) broadband service;

C  
o  
p  
y



(3) advanced services (as defined in 47 CFR 51.5); and  
 (4) Internet Protocol enabled services;  
 however classified by the Federal Communications Commission.

Sec. 5. As used in this chapter, "communications service equipment" refers to facilities or equipment:

- (1) installed on private or publicly owned real property; and
- (2) used to provide communications service to the premises.

Sec. 6. As used in this chapter, "communications service provider" means a person or an entity, or an affiliate of a person or an entity, that offers communications service to customers in Indiana, without regard to the technology or medium used by the person or entity to provide the communications service.

Sec. 7. As used in this chapter, "local exchange service" means the provision of telephone exchange service (as defined in 47 U.S.C. 153(47)) or exchange access (as defined in 47 U.S.C. 153(16)).

Sec. 8. As used in this chapter, "multitenant real estate" means any:

- (1) geographic area;
- (2) building; or
- (3) group of buildings;

containing more than one (1) unit for business purposes. The term includes office buildings and office parks. The term does not include apartment buildings, condominiums, or subdivisions.

Sec. 9. As used in this chapter, "occupant" refers to an occupant, a tenant, or a resident of multitenant real estate.

Sec. 10. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

Sec. 11. As used in this chapter, "provider of last resort" means a communications service provider that:

- (1) holds:
  - (A) an indeterminate permit;
  - (B) a certificate of territorial authority; or
  - (C) another license or authorization;
 issued by the commission; and
- (2) is required to offer local exchange service throughout a defined geographic area.

Sec. 12. As used in this chapter, "unit" has the meaning set forth in IC 36-1-2-23.

Sec. 13. As used in this chapter, "video service" means:

- (1) the transmission to subscribers of:
  - (A) video programming (as defined in 47 U.S.C. 522(20));

C  
o  
p  
y



1 and

2 (B) other programming service that consists of information  
3 that a communications service provider makes available to  
4 all subscribers generally;

5 without regard to the technology used to deliver the video  
6 programming or other programming service; and

7 (2) any subscriber interaction required for the selection or use  
8 of the video programming or other programming service.

9 Sec. 14. (a) After April 30, 2006, a communications service  
10 provider shall not enter into any contract, agreement, or other  
11 arrangement that does any of the following:

12 (1) Requires any person to restrict or limit:

13 (A) the ability of another communications service provider  
14 to obtain easements or rights-of-way for the installation of  
15 communications service equipment used to provide  
16 communications service to Indiana customers; or

17 (B) access to real property by another communications  
18 service provider.

19 (2) Offers or grants incentives or rewards to an owner of real  
20 property if the incentives or rewards are contingent upon the  
21 property owner's agreement to restrict or limit:

22 (A) the ability of another communications service provider  
23 to obtain easements or rights-of-way for the installation of  
24 communications service equipment on the property; or

25 (B) access to the owner's real property by another  
26 communications service provider.

27 A contract, an agreement, or any other arrangement that violates  
28 this section is void. This section may not be construed to affect the  
29 validity of a contract entered into before May 1, 2006.

30 (b) This section does not prohibit a communications service  
31 provider and a subscriber from entering into any lawful contract,  
32 agreement, or other arrangement concerning the communications  
33 service offered by the communications service provider to the  
34 subscriber.

35 (c) The commission may investigate whether a communications  
36 service provider has violated this section. The commission may  
37 initiate an investigation under this subsection upon:

38 (1) a complaint filed by:

39 (A) another communications service provider;

40 (B) a subscriber or potential subscriber of the  
41 communications service provider;

42 (C) a unit in which:

C  
o  
p  
y



- 1 (i) the communications service provider holds a
- 2 municipal franchise; and
- 3 (ii) the alleged violation occurred;
- 4 (D) the utility consumer counselor; or
- 5 (E) any class satisfying the standing requirements of
- 6 IC 8-1-2-54; or
- 7 (2) the commission's own motion.
- 8 (d) If, after notice and an opportunity for hearing, the
- 9 commission determines from an investigation conducted under
- 10 subsection (c) that a communications service provider has violated
- 11 this section, the commission may do any of the following:
- 12 (1) Issue an order directing the communications service
- 13 provider to cease and desist from violating this section.
- 14 (2) Mandate corrective action to alleviate the violation.
- 15 (3) Revoke or modify the terms of:
- 16 (A) an indeterminate permit;
- 17 (B) a certificate of territorial authority; or
- 18 (C) another license or authorization;
- 19 issued to the communications service provider by the
- 20 commission.
- 21 (4) Recommend that a unit revoke or modify the terms of:
- 22 (A) a municipal franchise; or
- 23 (B) another license or authorization;
- 24 issued to the communications service provider by the unit.
- 25 (5) Impose a civil penalty of not more than ten thousand
- 26 dollars (\$10,000) per violation. For purposes of this
- 27 subdivision, each contract, agreement, or arrangement that
- 28 violates this section is subject to a separate penalty. However,
- 29 the commission may not consider each day that a prohibited
- 30 contract, agreement, or arrangement remains in effect to be
- 31 a separate violation.
- 32 (e) The attorney general may bring an action in the name of the
- 33 state to enforce any action taken by the commission under
- 34 subsection (d), including the collection of an unpaid civil penalty
- 35 imposed by the commission.
- 36 (f) The secretary of the commission shall deposit civil penalties
- 37 collected under this section into an account designated by the
- 38 Indiana finance authority for use by the authority in making loans
- 39 or grants to broadband developers and operators under the
- 40 Indiana broadband development program established by
- 41 IC 8-1-33-15.
- 42 (g) The following are subject to appeal by a communications

C  
O  
P  
Y





1 service provider under IC 8-1-3:

2 (1) A determination by the commission under subsection (d)  
3 that a communications service provider has violated this  
4 section.

5 (2) The appropriateness of any action taken by the  
6 commission under subsection (d)(1) through (d)(4).

7 (3) The appropriateness of:

8 (A) the imposition of a civil penalty by the commission  
9 under subsection (d)(5); or

10 (B) the amount of the penalty imposed.

11 Upon the motion of a communications service provider, the  
12 commission shall stay the effect or enforceability of an order or  
13 penalty under this section pending an appeal, subject to the  
14 communications service provider posting a bond that complies  
15 with Rule 18 of the Indiana Rules of Appellate Procedure.

16 Sec. 15. (a) Except as provided in subsection (b), the owner,  
17 operator, or developer of multitenant real estate located in a  
18 service area in which one (1) or more communications service  
19 providers are authorized to provide communications service may  
20 not do any of the following:

21 (1) Prevent a communications service provider from installing  
22 on the premises communications service equipment that an  
23 occupant requests.

24 (2) Interfere with a communications service provider's  
25 installation on the premises of communications service  
26 equipment that an occupant requests.

27 (3) Discriminate against a communications service provider  
28 or impose unduly burdensome conditions on the terms,  
29 conditions, and compensation for a communications service  
30 provider's installation of communications service equipment  
31 on the premises.

32 (4) Demand or accept an unreasonable payment from:

33 (A) an occupant; or

34 (B) a communications service provider;

35 in exchange for allowing the communications service provider  
36 access to the premises.

37 (5) Discriminate against or in favor of an occupant in any  
38 manner, including charging higher or lower rental charges to  
39 the occupant, because of the communications service provider  
40 from which the occupant receives communications service.

41 (b) This section does not prohibit the owner, operator, or  
42 developer of multitenant real estate from doing any of the

C  
o  
p  
y



following:

(1) Imposing a condition on a communications service provider that is reasonably necessary to protect:

(A) the safety, security, appearance, or condition of the property; or

(B) the safety and convenience of other persons.

(2) Imposing a reasonable limitation on the hours during which a communications service provider may have access to the premises to install communications service equipment.

(3) Imposing a reasonable limitation on the number of communications service providers that have access to the premises, if the owner, operator, or developer can demonstrate a space constraint that requires the limitation.

(4) Requiring a communications service provider to agree to indemnify the owner, operator, or developer for damage caused by installing, operating, or removing communications service equipment on or from the premises.

(5) Requiring an occupant or a communications service provider to bear the entire cost of installing, operating, or removing communications service equipment.

(6) Requiring a communications service provider to pay compensation for access to or use of the premises, as long as the compensation is:

(A) reasonable; and

(B) nondiscriminatory;

among communications service providers.

(c) For purposes of this subsection, an "affected person" includes the following:

(1) An occupant that is a current or potential subscriber of communications service on the premises of multitenant real estate.

(2) A unit in which multitenant real estate is located, acting on behalf of:

(A) a person described in subdivision (1); or

(B) other similarly situated persons.

(3) A communications service provider.

An affected person that alleges a violation of this section by the owner, operator, or developer of multitenant real estate may seek equitable or compensatory relief in a court having jurisdiction. The party prevailing in any action filed under this section is entitled to recover the costs of the action, including reasonable attorney's fees as determined by the court.

C  
o  
p  
y



1       **Sec. 16 (a) The commission may not require a communications**  
 2 **service provider, including a provider of last resort, to provide any**  
 3 **communications service to the occupants of multitenant real estate**  
 4 **if the owner, operator, or developer of the multitenant real estate**  
 5 **does any of the following to the benefit of another communications**  
 6 **service provider:**

7       **(1) Permits only one (1) communications service provider to**  
 8 **install the provider's facilities or equipment during the**  
 9 **construction or development phase of the multitenant real**  
 10 **estate.**

11       **(2) Accepts or agrees to accept incentives or rewards that:**

12       **(A) are offered by a communications service provider to**  
 13 **the owner, operator, developer, or occupants of the**  
 14 **multitenant real estate; and**

15       **(B) are contingent upon the provision of communications**  
 16 **service by that provider to the occupants of the**  
 17 **multitenant real estate, to the exclusion of any services**  
 18 **provided by other communications service providers.**

19       **(3) Collects from the occupants of the multitenant real estate**  
 20 **any charges for the provision of communications service to**  
 21 **the occupants, including charges collected through rent, fees,**  
 22 **or dues.**

23       **(4) Enters into an agreement with a communications service**  
 24 **provider that is prohibited by section 14 of this chapter.**

25       **(b) This subsection applies to a communications service**  
 26 **provider that is relieved under subsection (a) of an obligation to**  
 27 **provide communications service to the occupants of multitenant**  
 28 **real estate. This section does not prohibit the communications**  
 29 **service provider from voluntarily offering service to the occupants**  
 30 **of the multitenant real estate. However, the commission shall not**  
 31 **exercise jurisdiction over the terms, conditions, rates, or**  
 32 **availability of any communications service voluntarily offered by**  
 33 **a communications service provider under this subsection.**

34       **Sec. 17. The commission may adopt rules under IC 4-22-2 to**  
 35 **implement this chapter.**

36       **SECTION 38. IC 8-1-34 IS ADDED TO THE INDIANA CODE AS**  
 37 **A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON**  
 38 **PASSAGE]:**

39       **Chapter 34. Video Service Franchises**

40       **Sec. 1. As used in this chapter, "incumbent cable operator"**  
 41 **means the cable operator (as defined in 47 U.S.C. 522(5)) serving**  
 42 **the largest number of cable service subscribers in a particular unit.**

**C**  
**O**  
**P**  
**Y**



1        **Sec. 2.** As used in this chapter, "local franchise" means an initial  
 2        authorization, or a renewal of an authorization, that authorizes the  
 3        construction or operation of a cable system (as defined in 47 U.S.C.  
 4        522(7)) in a designated service area in the unit.

5        **Sec. 3.** As used in this chapter, "unit" has the meaning set forth  
 6        in IC 36-1-2-23.

7        **Sec. 4.** As used in this chapter, "video programming" has the  
 8        meaning set forth in 47 U.S.C. 522(20).

9        **Sec. 5. (a)** A unit shall make a local franchise available to any  
 10        entity other than the unit's incumbent cable operator that seeks to  
 11        provide video programming in the unit by means of any facilities  
 12        that in whole or in part make use of public rights-of-way,  
 13        regardless of technology. A franchise made available under this  
 14        subsection must contain identical terms and conditions to the  
 15        franchise in effect for the incumbent cable operator serving the  
 16        unit.

17        **(b)** The unit shall make the local franchise described in  
 18        subsection (a) available for execution not more than fifteen (15)  
 19        days after the unit's receipt of a written application that is in a  
 20        form acceptable to the unit and contains all the information  
 21        required by the unit.

22        **(c)** An entity that does not have a franchise may not provide  
 23        video programing by means of any facilities, regardless of  
 24        technology, that in whole or in part make use of public  
 25        rights-of-way.

26        **(3)** pay an application fee, a document fee, a state franchise  
 27        fee, a service charge, or any fee other than the franchise fee  
 28        paid to local units under section 24 of this chapter;

29        SECTION 39. IC 8-1-36 IS ADDED TO THE INDIANA CODE AS  
 30        A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON  
 31        PASSAGE]:

32        **Chapter 36. Indiana Lifeline Assistance Program**

33        **Sec. 1.** This chapter applies to an incumbent local exchange  
 34        carrier that offers basic telecommunications service in one (1) or  
 35        more exchange areas in Indiana.

36        **Sec. 2.** Except as otherwise provided in this chapter, the  
 37        definitions in IC 8-1-2.6 apply throughout this chapter.

38        **Sec. 3.** As used in this chapter, "commission" refers to the  
 39        Indiana utility regulatory commission created by IC 8-1-1-2.

40        **Sec. 4.** As used in this chapter, "customer" refers to a  
 41        residential customer that receives basic telecommunications service  
 42        from an incumbent local exchange carrier.

**C  
o  
p  
y**



1       **Sec. 5. As used in this chapter, "eligible customer" refers to a**  
 2       **customer who:**

- 3               **(1) is not a qualifying low-income consumer (as defined in 47**  
 4               **CFR 54.400(a)) under the federal lifeline program; but**  
 5               **(2) is eligible for the Indiana lifeline assistance program under**  
 6               **section 11 of this chapter.**

7       **Sec. 6. As used in this chapter, "eligible telecommunications**  
 8       **carrier" refers to an incumbent local exchange carrier that is**  
 9       **designated as an eligible telecommunications carrier by the**  
 10       **commission under 47 CFR 54.201.**

11       **Sec. 7. As used in this chapter, "federal lifeline program" refers**  
 12       **to the retail local service offering:**

- 13               **(1) available only to qualifying low-income consumers (as**  
 14               **defined in 47 CFR 54.400(a));**  
 15               **(2) for which qualifying low-income consumers pay reduced**  
 16               **charges as a result of the application of the lifeline support**  
 17               **amount described in 47 CFR 54.403; and**  
 18               **(3) that includes the services and functionalities set forth in 47**  
 19               **CFR 54.101(a)(1) through (a)(9);**

20       **as described in 47 CFR 54.401.**

21       **Sec. 8. As used in this chapter, "participant" refers to an eligible**  
 22       **customer who applies for and receives assistance through the**  
 23       **program.**

24       **Sec. 9. As used in this chapter, "program" refers to the Indiana**  
 25       **lifeline assistance program established by the commission under**  
 26       **section 10 of this chapter.**

27       **Sec. 10. (a) Not later than July 1, 2008, the commission shall**  
 28       **adopt rules under IC 4-22-2 to establish the Indiana lifeline**  
 29       **assistance program. The program must offer reduced charges for**  
 30       **basic telecommunications service to eligible customers. The rules**  
 31       **adopted by the commission under this section must do the**  
 32       **following:**

- 33               **(1) Require an eligible telecommunications carrier to offer toll**  
 34               **limitation (as defined in 47 CFR 54.400(d)) to an eligible**  
 35               **customer who applies for assistance under the program. The**  
 36               **rules must specify that an eligible telecommunications carrier**  
 37               **may not charge a participant an administrative charge or any**  
 38               **other additional amount for toll limitation.**  
 39               **(2) Allow an eligible telecommunications carrier to block a**  
 40               **participant's access to interexchange service, except for access**  
 41               **to toll free numbers, if the participant owes an outstanding**  
 42               **amount for basic telecommunications service. The rules must**

**C**  
**O**  
**P**  
**Y**



1 require an eligible telecommunications carrier to remove the  
 2 block without additional cost to the participant upon payment  
 3 of the outstanding amount.

4 (3) Prohibit an eligible telecommunications carrier from  
 5 discontinuing basic telecommunications service to a  
 6 participant because of nonpayment by the participant of  
 7 charges for other services billed by the eligible  
 8 telecommunications carrier, including interexchange service.

9 (b) The following costs of the program shall be paid from the  
 10 telecommunications budgets of the commission and the office of  
 11 utility consumer counselor as determined under IC 8-1-6-1:

12 (1) The costs of reimbursing eligible telecommunications  
 13 carriers for lost revenues associated with providing reduced  
 14 charges for basic telecommunications service to participants.

15 (2) Reasonable expenses incurred by the commission and  
 16 eligible telecommunications carriers to:

17 (A) administer the program; and

18 (B) publicize the availability of the program in a manner  
 19 reasonably designed to reach eligible customers.

20 (c) The rules adopted by the commission under IC 4-22-2 to  
 21 establish the program must:

22 (1) take effect not later than July 1, 2009;

23 (2) be consistent with this chapter.

24 Upon the effective date of the rules adopted by the commission  
 25 under this section, an eligible telecommunications carrier shall  
 26 offer basic telecommunications service to an eligible customer at  
 27 the reduced rates established under the rules.

28 Sec. 11. A customer is eligible to receive reduced rates for basic  
 29 telecommunications service under the program if:

30 (1) the customer's income (as defined in 47 CFR 54.400(f))  
 31 does not exceed one hundred fifty percent (150%) of the  
 32 federal poverty guidelines; or

33 (2) any person in the customer's household receives or has a  
 34 child who receives any of the following:

35 (A) Medicaid.

36 (B) Food stamps.

37 (C) Supplemental Security Income.

38 (D) Federal public housing assistance.

39 (E) Home energy assistance under a program administered  
 40 by the division of family resources under IC 12-14-11.

41 (F) Assistance under the federal Temporary Assistance to  
 42 Needy Families (TANF) program (45 CFR 260 et seq.).

**C**  
**O**  
**P**  
**Y**



(G) Free lunches under the national school lunch program.

**Sec. 12. An eligible telecommunications carrier may seek TierThree federal lifeline support under 47 CFR 54.403(a)(3) in connection with support provided by the eligible telecommunications carrier under this chapter.**

**SECTION 40. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2006]: IC 8-1-2.6-3; IC 8-1-2.6-5; IC 8-1-2.6-7.**

**SECTION 41. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.**

**(b) Not later than November 15, 2007, the commission shall submit to the regulatory flexibility committee established by IC 8-1-2.6-4 a report that includes an analysis of the following issues:**

**(1) The status of competition in Indiana within the wireline and wireless telecommunications industries and between the wireline and wireless telecommunications industries.**

**(2) The level of concentration of ownership in the telecommunications industry and the degree to which corporate mergers, acquisitions, and buyouts within the industry affect consumer choices and pricing in Indiana.**

**(3) For each county in Indiana, a breakdown of the number of available providers of the following services:**

**(A) Wireline telephone services.**

**(B) Wireless telephone services.**

**(C) Wireless broadband services.**

**(D) Broadband services other than wireless broadband services.**

**The commission shall pay particular attention to the availability of broadband services in underserved areas (as defined in IC 8-1-33-13).**

**(4) The effects of the following on universal service in Indiana:**

**(A) The convergence of telecommunications service and technologies.**

**(B) State and federal regulatory decisions.**

**(5) The degree to which the use of new technologies in the telecommunications industry affects the reliability of telecommunications service, including the provision of enhanced 911 services and 211 services.**

**(6) The impact on consumers and telecommunications service providers of:**

**C  
o  
p  
y**



- 1 (A) federal telecommunications laws and regulations; and  
 2 (B) state and federal judicial decisions concerning  
 3 telecommunications laws and regulations.  
 4 (7) A comparison of Indiana's contributions to the federal  
 5 universal service fund versus federal universal service fund  
 6 allocations or discounts provided to eligible recipients in  
 7 Indiana.  
 8 (c) In compiling the information required under subsection  
 9 (b)(3), the commission shall prepare a map identifying the location  
 10 of the infrastructure used to provide the services described in  
 11 subsection (b)(3). The map prepared under this subsection is  
 12 confidential and exempt from public disclosure under  
 13 IC 5-14-3-4(a)(1). The map shall not be included in the report  
 14 prepared by the commission under this SECTION but shall remain  
 15 on file in the offices of the commission.  
 16 (d) The report prepared under this SECTION must be separate  
 17 from the commission's annual report to the regulatory flexibility  
 18 committee under IC 8-1-2.6-4. The commission shall include in the  
 19 report any recommendations for proposed legislation concerning  
 20 the issues analyzed in the report.  
 21 (e) The commission shall involve the following entities in the  
 22 development of the report under this SECTION:  
 23 (1) Colleges and universities.  
 24 (2) Rural electric membership corporations.  
 25 (3) Incumbent local exchange carriers.  
 26 (4) Competitive local exchange carriers.  
 27 (5) Cable television providers.  
 28 (6) The office of utility consumer counselor created by  
 29 IC 8-1-1.1-2.  
 30 (7) CMRS providers (as defined in IC 36-8-16.5-6).  
 31 SECTION 42. An emergency is declared for this act.

C  
O  
P  
Y





## COMMITTEE REPORT

Mr. Speaker: Your Committee on Technology, Research and Development, to which was referred House Bill 1279, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 26, delete "or".

Page 3, line 29, after "subdivision (1);" insert "**or**".

Page 3, between lines 29 and 30, begin a new line block indented and insert:

**"(3) provides commercial mobile radio service (as defined in 47 CFR 51.5);"**.

Page 3, line 31, delete "subdivisions (1)" and insert "**this section.**".

Page 3, delete line 32.

Page 6, line 34, delete "or".

Page 6, between lines 34 and 35, begin a new line block indented and insert:

**"(5) a CMRS provider (as defined in IC 36-8-16.5-6); or"**.

Page 6, line 35, delete "(5)" and insert "**(6)**".

Page 7, line 13, delete "2007," and insert "**2006,**".

Page 7, line 15, delete "service except as follows:" and insert "**service.**".

Page 7, delete lines 16 through 29.

Page 9, between lines 20 and 21, begin a new paragraph and insert:

**"(g) This section may not be construed to permit a provider to impose local measured service on the provider's basic telecommunications customers."**

Page 11, line 27, after "customers" delete ";" and insert ", **other than video provided under federally licensed bandwidth;**".

Page 16, between lines 31 and 32, begin a new paragraph and insert:

**"SECTION 27. IC 8-1-2.8-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8.5. As used in this chapter, "provider" has the meaning set forth in IC 8-1-2.6-0.5."**

Page 17, line 21, delete "LECs" and insert "**providers**".

Page 17, line 23, delete "LECs;" and insert "**providers;**".

Page 17, line 28, delete "LECs" and insert "**providers**".

Page 18, line 18, delete "communications service".

Page 18, line 19, delete "(as defined in IC 8-1-32.6-6)".

Page 19, line 4, delete "communications service".

Page 19, line 36, delete "LEC" and insert "**provider**".

Page 19, line 38, delete "LEC," and insert "**provider,**".

C  
o  
p  
y



Page 19, line 38, delete "LEC." and insert "**provider.**".  
 Page 19, line 41, delete "LEC" and insert "**provider**".  
 Page 20, line 20, delete "communications service".  
 Page 20, line 20, delete "(as".  
 Page 20, line 21, delete "defined in IC 8-1-32.6-6)".  
 Page 20, line 42, delete "LEC" and insert "**provider**".  
 Page 22, line 9, delete "not do any of the following:" and insert "**not,**".  
 Page 22, line 10, delete "(1) With" and insert "**with**".  
 Page 22, run in lines 9 through 10.  
 Page 22, line 12, delete "anticompetitive or".  
 Page 22, delete lines 13 through 42, and insert "**discriminatory.**  
**For purposes of this subsection, a rate, term, or condition for retail service is unreasonably preferential, prejudicial, or discriminatory if the rate, term, or condition:**  
     **(1) is not offered uniformly to all comparably situated customers in a metropolitan statistical area; or**  
     **(2) violates IC 8-1-2-103(a) or IC 8-1-2-105, to the extent that the provider is subject to IC 8-1-2-103(a) or IC 8-1-2-105.**"  
 Page 23, line 3, delete "an incumbent local exchange carrier" and insert "**a provider**".  
 Page 23, line 4, delete "5(3)" and insert "**5**".  
 Page 24, delete lines 23 through 24.  
 Page 24, line 25, delete "(B)" and insert "**(A)**".  
 Page 24, line 36, delete "(C)" and insert "**(B)**".  
 Page 27, line 27, delete "Telecommunications" and insert "**A telecommunications**".  
 Page 27, line 28, after "153(46))" delete "." and insert "**other than commercial mobile radio service (as defined in 47 CFR 51.5).**".  
 Page 27, line 29, delete "Information" and insert "**An information**".  
 Page 31, delete lines 5 through 42.  
 Delete page 32.  
 Page 33, delete lines 1 through 23.  
 Page 33, line 24, delete "17." and insert "**15**".  
 Page 36, line 2, after "to any" insert "**unit or**".  
 Page 42, line 3, delete "view and video on demand charges" and

C  
 o  
 p  
 y



insert "view."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1279 as introduced.)

MURPHY, Chair

Committee Vote: yeas 8, nays 3.

---

### HOUSE MOTION

Mr. Speaker: I move that House Bill 1279 be amended to read as follows:

Page 21, line 26, delete "that is:" and insert "**and a certificate holder.**".

Page 21, delete lines 27 through 33.

Page 21, between lines 37 and 38, begin a new paragraph and insert:

**"Sec. 3.5. As used in this chapter, "certificate holder" refers to a person holding a certificate of franchise authority issued under IC 8-1-34-17."**

Page 22, line 11, delete "a metropolitan statistical area;" and insert **"an exchange area or a service area regulated under IC 8-1-34;"**.

Page 22, line 18, after "provider" insert **"or a certificate holder"**.

Page 22, line 19, delete "quarterly," and insert **"semi-annually,"**.

Page 22, line 31, after "provider" insert **"or a certificate holder"**.

Page 22, line 37, after "provider's" insert **"or a certificate holder's"**.

Page 23, between lines 3 and 4, begin a new line block indented and insert:

**"(4) A franchise authorized under IC 8-1-34."**

Page 23, line 6, delete "provider;" and insert **"provider or a certificate holder;"**.

Page 23, line 12, after "provider" insert **"or a certificate holder"**.

Page 23, line 23, after "provider" insert **"or a certificate holder"**.

Page 23, line 25, after "provider" insert **"or the certificate holder"**.

Page 23, line 30, delete "or".

Page 23, between lines 30 and 31, begin a new line double block indented and insert:

**"(C) a certificate of franchise authority issued under IC 8-1-34; or"**.

Page 23, line 31, delete "(C)" and insert **"(D)"**.

C  
o  
p  
y



Page 23, line 32, after "provider" insert **"or the certificate holder"**.  
 Page 23, line 41, after "provider" insert **"or the certificate holder"**.  
 Page 24, line 2, after "provider" insert **"or the certificate holder"**.  
 Page 24, line 3, after "provider" insert **"or the certificate holder"**.  
 Page 24, line 8, after "provider" insert **"or the certificate holder"**.  
 Page 24, line 9, delete "provider;" and insert **"provider or the certificate holder;"**.

Page 24, line 11, after "provider" insert **"or the certificate holder"**.  
 Page 24, line 23, after "provider" insert **"or a certificate holder"**.  
 Page 24, line 41, after "provider" insert **"or a certificate holder"**.  
 Page 25, line 6, delete "provider;" and insert **"provider or a certificate holder,"**.

Page 25, line 8, after "provider" insert **"or the certificate holder"**.  
 Page 25, line 15, after "provider" insert **"or certificate holder"**.  
 Page 25, line 17, after "provider" insert **"or certificate holder"**.  
 Page 25, line 21, delete "provider;" and insert **"provider or certificate holder;"**.

Page 25, line 24, after "provider" insert **"or certificate holder"**.  
 Page 25, line 26, after "provider" insert **"or certificate holder"**.  
 Page 26, line 8, after "provider" insert **"or certificate holder"**.  
 Page 26, line 11, after "another provider" insert **"or another certificate holder"**.

Page 26, line 11, delete "provider." and insert **"provider or certificate holder."**

(Reference is to HB 1279 as printed January 20, 2006.)

MURPHY

---

#### HOUSE MOTION

Mr. Speaker: I move that House Bill 1279 be amended to read as follows:

Page 14, line 17, delete "or".

Page 14, line 23, delete "IC 8-1-29.5." and insert **"IC 8-1-29.5; or"**.

Page 14, between lines 23 and 24, begin a new line block indented and insert:

**"(7) the commission's authority to investigate and resolve pursuant to IC 8-1-2-5 an interconnection not governed by federal law."**

Page 26, line 20, delete "UPON PASSAGE]" and insert "MAY 1,

HB 1279—LS 6902/DI 101+



C  
o  
p  
y

2006]".

Page 27, line 18, delete "section," and insert "**chapter**,".

Page 27, line 23, delete "or residential".

Page 27, line 24, delete "apartment buildings, condominiums,"

Page 27, line 25, delete "subdivisions,".

Page 27, line 25, delete "buildings," and insert "**buildings**".

Page 27, line 25, after "." insert "**The term does not include apartment buildings, condominiums, or subdivisions.**".

Page 28, line 11, delete "A" and insert "**After April 30, 2006, a**".

Page 28, line 30, after "." insert "**This section may not be construed to affect the validity of a contract entered into before May 1, 2006.**".

Page 30, between lines 16 and 17, begin a new paragraph and insert:

**"Sec. 15. (a) Except as provided in subsection (b), the owner, operator, or developer of multitenant real estate located in a service area in which one (1) or more communications service providers are authorized to provide communications service may not do any of the following:**

**(1) Prevent a communications service provider from installing on the premises communications service equipment that an occupant requests.**

**(2) Interfere with a communications service provider's installation on the premises of communications service equipment that an occupant requests.**

**(3) Discriminate against a communications service provider or impose unduly burdensome conditions on the terms, conditions, and compensation for a communications service provider's installation of communications service equipment on the premises.**

**(4) Demand or accept an unreasonable payment from:**

**(A) an occupant; or**

**(B) a communications service provider;**

**in exchange for allowing the communications service provider access to the premises.**

**(5) Discriminate against or in favor of an occupant in any manner, including charging higher or lower rental charges to the occupant, because of the communications service provider from which the occupant receives communications service.**

**(b) This section does not prohibit the owner, operator, or developer of multitenant real estate from doing any of the following:**

**(1) Imposing a condition on a communications service**

C  
o  
p  
y



provider that is reasonably necessary to protect:

- (A) the safety, security, appearance, or condition of the property; or
- (B) the safety and convenience of other persons.
- (2) Imposing a reasonable limitation on the hours during which a communications service provider may have access to the premises to install communications service equipment.
- (3) Imposing a reasonable limitation on the number of communications service providers that have access to the premises, if the owner, operator, or developer can demonstrate a space constraint that requires the limitation.
- (4) Requiring a communications service provider to agree to indemnify the owner, operator, or developer for damage caused by installing, operating, or removing communications service equipment on or from the premises.
- (5) Requiring an occupant or a communications service provider to bear the entire cost of installing, operating, or removing communications service equipment.
- (6) Requiring a communications service provider to pay compensation for access to or use of the premises, as long as the compensation is:
  - (A) reasonable; and
  - (B) nondiscriminatory;
 among communications service providers.

(c) For purposes of this subsection, an "affected person" includes the following:

- (1) An occupant that is a current or potential subscriber of communications service on the premises of multitenant real estate.
- (2) A unit in which multitenant real estate is located, acting on behalf of:
  - (A) a person described in subdivision (1); or
  - (B) other similarly situated persons.
- (3) A communications service provider.

An affected person that alleges a violation of this section by the owner, operator, or developer of multitenant real estate may seek equitable or compensatory relief in a court having jurisdiction. The party prevailing in any action filed under this section is entitled to recover the costs of the action, including reasonable attorney's fees as determined by the court.

Sec. 16 (a) The commission may not require a communications service provider, including a provider of last resort, to provide any

**C**  
**O**  
**P**  
**Y**



communications service to the occupants of multitenant real estate if the owner, operator, or developer of the multitenant real estate does any of the following to the benefit of another communications service provider:

(1) Permits only one (1) communications service provider to install the provider's facilities or equipment during the construction or development phase of the multitenant real estate.

(2) Accepts or agrees to accept incentives or rewards that:

(A) are offered by a communications service provider to the owner, operator, developer, or occupants of the multitenant real estate; and

(B) are contingent upon the provision of communications service by that provider to the occupants of the multitenant real estate, to the exclusion of any services provided by other communications service providers.

(3) Collects from the occupants of the multitenant real estate any charges for the provision of communications service to the occupants, including charges collected through rent, fees, or dues.

(4) Enters into an agreement with a communications service provider that is prohibited by section 14 of this chapter.

(b) This subsection applies to a communications service provider that is relieved under subsection (a) of an obligation to provide communications service to the occupants of multitenant real estate. This section does not prohibit the communications service provider from voluntarily offering service to the occupants of the multitenant real estate. However, the commission shall not exercise jurisdiction over the terms, conditions, rates, or availability of any communications service voluntarily offered by a communications service provider under this subsection."

Page 30, line 17, delete "15." and insert "17."

(Reference is to HB 1279 as printed January 20, 2006.)

MURPHY

---

#### HOUSE MOTION

Mr. Speaker: I move that House Bill 1279 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new

HB 1279—LS 6902/DI 101+



C  
O  
P  
Y

paragraph and insert:

"SECTION 1. IC 8-1-1.1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. The governor shall appoint a consumer counselor, for a term of four (4) years at a salary to be fixed by the governor. The counselor shall serve at the will and pleasure of the governor. The counselor shall be a practicing attorney, and qualified by knowledge and experience to practice in utility regulatory agency proceedings. The counselor shall apply ~~his~~ **the counselor's** full efforts to the duties of the office and may not ~~be actively engaged~~ **engage** in any ~~other~~ occupation, practice, profession or business **that would conflict with the duties of the office.**".

Renumber all SECTIONS consecutively.

(Reference is to HB 1279 as printed January 20, 2006.)

MURPHY

---

#### HOUSE MOTION

Mr. Speaker: I move that House Bill 1279 be amended to read as follows:

Page 41, line 21, delete "subsection (e)," and insert "**subsections (e) and (f),**".

Page 42, between lines 32 and 33, begin a new paragraph and insert:

**"(f) This subsection applies only to a holder issued a certificate to provide video service in a unit that imposed a franchise fee of less than five percent (5%) as of July 1, 2006. A fee may not be imposed upon the holder under this section that exceeds the fee imposed as of July 1, 2006, unless the unit's fiscal body adopts an ordinance establishing the fee. A fee established by ordinance under this subsection may not exceed:**

- (1) the amount of gross revenue received from providing video service in the unit during the most recent calendar quarter, as determined under section 23 of this chapter; multiplied by**
- (2) five percent (5%)."**

(Reference is to HB 1279 as printed January 20, 2006.)

MURPHY



C  
o  
p  
y



## HOUSE MOTION

Mr. Speaker: I move that House Bill 1279 be amended to read as follows:

Page 14, line 17, delete "or".

Page 14, line 23, delete "IC 8-1-29.5." and insert "**IC 8-1-29.5; or**".

Page 14, between lines 23 and 24, begin a new line block indented and insert:

**"(7) the commission's duty to establish and administer the Indiana lifeline assistance program under IC 8-1-36."**

Page 46, between lines 40 and 41, begin a new paragraph and insert:  
"SECTION 38. IC 8-1-36 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 36. Indiana Lifeline Assistance Program**

**Sec. 1. This chapter applies to an incumbent local exchange carrier that offers basic telecommunications service in one (1) or more exchange areas in Indiana.**

**Sec. 2. Except as otherwise provided in this chapter, the definitions in IC 8-1-2.6 apply throughout this chapter.**

**Sec. 3. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.**

**Sec. 4. As used in this chapter, "customer" refers to a residential customer that receives basic telecommunications service from an incumbent local exchange carrier.**

**Sec. 5. As used in this chapter, "eligible customer" refers to a customer who:**

- (1) is not a qualifying low-income consumer (as defined in 47 CFR 54.400(a)) under the federal lifeline program; but**
- (2) is eligible for the Indiana lifeline assistance program under section 11 of this chapter.**

**Sec. 6. As used in this chapter, "eligible telecommunications carrier" refers to an incumbent local exchange carrier that is designated as an eligible telecommunications carrier by the commission under 47 CFR 54.201.**

**Sec. 7. As used in this chapter, "federal lifeline program" refers to the retail local service offering:**

- (1) available only to qualifying low-income consumers (as defined in 47 CFR 54.400(a));**
- (2) for which qualifying low-income consumers pay reduced charges as a result of the application of the lifeline support amount described in 47 CFR 54.403; and**
- (3) that includes the services and functionalities set forth in 47**

C  
O  
P  
Y



CFR 54.101(a)(1) through (a)(9);  
as described in 47 CFR 54.401.

**Sec. 8.** As used in this chapter, "participant" refers to an eligible customer who applies for and receives assistance through the program.

**Sec. 9.** As used in this chapter, "program" refers to the Indiana lifeline assistance program established by the commission under section 10 of this chapter.

**Sec. 10. (a)** Not later than July 1, 2008, the commission shall adopt rules under IC 4-22-2 to establish the Indiana lifeline assistance program. The program must offer reduced charges for basic telecommunications service to eligible customers. The rules adopted by the commission under this section must do the following:

(1) Require an eligible telecommunications carrier to offer toll limitation (as defined in 47 CFR 54.400(d)) to an eligible customer who applies for assistance under the program. The rules must specify that an eligible telecommunications carrier may not charge a participant an administrative charge or any other additional amount for toll limitation.

(2) Allow an eligible telecommunications carrier to block a participant's access to interexchange service, except for access to toll free numbers, if the participant owes an outstanding amount for basic telecommunications service. The rules must require an eligible telecommunications carrier to remove the block without additional cost to the participant upon payment of the outstanding amount.

(3) Prohibit an eligible telecommunications carrier from discontinuing basic telecommunications service to a participant because of nonpayment by the participant of charges for other services billed by the eligible telecommunications carrier, including interexchange service.

**(b)** The following costs of the program shall be paid from the telecommunications budgets of the commission and the office of utility consumer counselor as determined under IC 8-1-6-1:

(1) The costs of reimbursing eligible telecommunications carriers for lost revenues associated with providing reduced charges for basic telecommunications service to participants.

(2) Reasonable expenses incurred by the commission and eligible telecommunications carriers to:

(A) administer the program; and

(B) publicize the availability of the program in a manner

**C  
O  
P  
Y**



reasonably designed to reach eligible customers.

(c) The rules adopted by the commission under IC 4-22-2 to establish the program must:

- (1) take effect not later than July 1, 2009;
- (2) be consistent with this chapter.

Upon the effective date of the rules adopted by the commission under this section, an eligible telecommunications carrier shall offer basic telecommunications service to an eligible customer at the reduced rates established under the rules.

Sec. 11. A customer is eligible to receive reduced rates for basic telecommunications service under the program if:

- (1) the customer's income (as defined in 47 CFR 54.400(f)) does not exceed one hundred fifty percent (150%) of the federal poverty guidelines; or
- (2) any person in the customer's household receives or has a child who receives any of the following:

- (A) Medicaid.
- (B) Food stamps.
- (C) Supplemental Security Income.
- (D) Federal public housing assistance.
- (E) Home energy assistance under a program administered by the division of family resources under IC 12-14-11.
- (F) Assistance under the federal Temporary Assistance to Needy Families (TANF) program (45 CFR 260 et seq.).
- (G) Free lunches under the national school lunch program.

Sec. 12. An eligible telecommunications carrier may seek TierThree federal lifeline support under 47 CFR 54.403(a)(3) in connection with support provided by the eligible telecommunications carrier under this chapter."

Renumber all SECTIONS consecutively.

(Reference is to HB 1279 as printed January 20, 2006.)

Representative Mays

# HOUSE MOTION

Mr. Speaker: I move that House Bill 1279 be amended to read as follows:

- Page 11, line 12, delete "(as defined in".
- Page 11, line 13, delete "IC 8-1-34-14)".
- Page 11, line 13, delete "customers, as determined by the" and insert

HB 1279—LS 6902/DI 101+



C  
o  
p  
y

"customers."

Page 11, line 14, delete "commission in carrying out its duties under IC 8-1-34."

Page 30, delete lines 23 through 42, begin a new paragraph and insert:

**"Sec. 1. As used in this chapter, "incumbent cable operator" means the cable operator (as defined in 47 U.S.C. 522(5)) serving the largest number of cable service subscribers in a particular unit."**

Page 31, delete lines 1 through 6.

Page 31, line 7, delete "8." and insert "2."

Page 31, line 8, delete ":".

Page 31, delete line 9.

Page 31, line 10, delete "(2)".

Page 31, line 10, delete "video service" and insert "cable".

Page 31, run in lines 8 through 10.

Page 31, line 11, after "system" insert "(as defined in 47 U.S.C. 522(7))".

Page 31, delete lines 12 through 42, begin a new paragraph and insert:

**"Sec. 3. As used in this chapter, "unit" has the meaning set forth in IC 36-1-2-23.**

**Sec. 4. As used in this chapter, "video programming" has the meaning set forth in 47 U.S.C. 522(20).**

**Sec. 5. (a) A unit shall make a local franchise available to any entity other than the unit's incumbent cable operator that seeks to provide video programming in the unit by means of any facilities that in whole or in part make use of public rights-of-way, regardless of technology. A franchise made available under this subsection must contain identical terms and conditions to the franchise in effect for the incumbent cable operator serving the unit.**

**(b) The unit shall make the local franchise described in subsection (a) available for execution not more than fifteen (15) days after the unit's receipt of a written application that is in a form acceptable to the unit and contains all the information required by the unit.**

**(c) An entity that does not have a franchise may not provide video programming by means of any facilities, regardless of technology, that in whole or in part make use of public rights-of-way."**

Delete pages 32 through 45.

C  
O  
P  
Y



Page 46, delete lines 1 through 40.  
 Renumber all SECTIONS consecutively.

(Reference is to HB 1279 as printed January 20, 2006.)

MESSER

---

HOUSE MOTION

Mr. Speaker: I move that House Bill 1279 be amended to read as follows:

Page 34, line 15, delete "or".

Page 34, line 17, after ";" insert "**or**".

Page 34, between lines 17 and 18, begin a new line block indented and insert:

**"(3) pay an application fee, a document fee, a state franchise fee, a service charge, or any fee other than the franchise fee paid to local units under section 24 of this chapter;"**.

(Reference is to HB 1279 as printed January 20, 2006.)

AUSTIN

---

HOUSE MOTION

Mr. Speaker: I move that House Bill 1279 be amended to read as follows:

Page 9, between lines 40 and 41, begin a new line block indented and insert:

**"(3) Ensure consumer access to affordable basic telecommunications service."**

Page 9, line 41, delete "(3)" and insert "**(4)**".

Page 10, line 1, delete "(4)" and insert "**(5)**".

Page 10, line 3, delete "(5)" and insert "**(6)**".

Page 12, between lines 31 and 32, begin a new paragraph and insert:

**"(b) Not later than July 1, 2007, the commission shall adopt rules under IC 4-22-2 to require a telecommunications service provider, at any time the provider communicates with a residential customer about changing the customer's basic telecommunications service to nonbasic telecommunications service, to notify the residential customer of:**



C  
O  
P  
Y

**(1) the option of basic telecommunications service; and  
(2) any regulatory protections, including pricing or quality of service, that the residential customer would forego by switching to nonbasic telecommunications service."**

Page 12, line 32, delete "(b)" and insert "(c)".

(Reference is to HB 1279 as printed January 20, 2006.)

MOSES

---

HOUSE MOTION

Mr. Speaker: I move that House Bill 1279 be recommitted to a Committee of One, its sponsor, with specific instructions to amend as follows:

Page 22, line 34, after ""service" insert "**area**".

(Reference is to HB 1279 as reprinted January 26, 2006.)

MURPHY

---

COMMITTEE REPORT

Mr. Speaker: Your Committee of One, to which was referred House Bill 1279, begs leave to report that said bill has been amended as directed.

MURPHY

**C  
o  
p  
y**

